IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5154 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

JAYISINGBHAI KANJIBHAI

Versus

DHRANGADHAR CHEMICALS WORKS LTD

Appearance:

1. Special Civil Application No. 5154 of 2002

MRS DT SHAH for Petitioner No. 1

NANAVATI ASSOCIATES for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 01/03/2004

ORAL JUDGEMENT

This petition is taken up for hearing simultaneously which is being tagged with the SCA No.6913/03 and both are listed today. With the consent of parties matter is taken up for final hearing today.

2. The only question which is required to be examined in this petition is whether the settlement arrived at by the representatives of the workmen in the proceedings of reference case in the absence of any consent given by the said workmen to the representatives of the union.

3. The short facts of the case are that the petitioner raised dispute on the question of his correct date of birth and ultimately the said dispute was referred to the labour court for adjudication being Ref(LCR)No.467/90. The said case was subsequently transferred to Labour Court, Surendranagar which was registered as Ref(LCR)508/90.

4. It appears that in the said reference on 21.9.96 a purshis was produced by way of settlement which was and the said settlement was signed by the representative of the union and the respondent-company and the same was not signed by the petitioner who was concerned workman. The labour court without examining the aspect as to whether the workman has signed or as to whether the workman is agreeable or not for such settlement, acted upon the said settlement and passed the award on the same day in terms of settlement. The said award is dated 21.9.96 which is under challenge in this petition.

5. Heard Ms.Shah for the petitioner and Mr.Nanavaty for the respondent No.1. Upon hearing learned counsel for both sides it appears that it is an admitted position that the amount of Rs.15,000/- as per settlement is not received by the petitioner workman. However, Mr.Nanavaty for the respondent No.1 submitted that the respondent company had forwarded the payment but the same is not accepted by the petitioner. Therefore, it is apparent that the workman who is petitioner herein has not even acted pursuant to the said settlement.

6. There is no dispute on the point that the settlement which was produced before the labour court is not signed by the workman concerned. It has been submitted on behalf of the petitioner that the petitioner was not aware of the said settlement nor any authority was given by the petitioner to the representative for entering into settlement and/or for signing the settlement. Mr.Nanavaty submitted that the representative of the union had signed the settlement and therefore it should be treated as valid settlement. In my view, so far as the settlement and acting upon the settlement is concerned, under CPC it has been provided that the court has to verify in the presence of the

concerned party regarding the settlement genuinely entered into or is with the consent of the party or not. Even though the provisions of CPC may not be strictly applicable to the procedure of reference normally principles analogous to the same can be made applicable for the purpose of recording a settlement and acting by the court upon such settlement. If such principles are applied it is apparent that the court has not verified as to whether the petitioner workman has signed the said settlement or not nor has verified as to whether the workman is agreeable for the said settlement. It may be that in a given case under special authority representative of the party may sign such settlement and could request the court to act upon such settlement but there should be special reference for the same and the court also should have taken into consideration the said aspect. A perusal of the purshis shows that the settlement does not record either of the same and therefore in normal circumstances in the absence of signature of the workman and or confession of the same in the presence of the court the labour court ought not to have acted upon such settlement by passing consent award on the basis of socalled settlement. Therefore, it is apparent that the labour court has committed jurisdictional error in passing the award based on socalled settlement which is not genuine and hence award passed by the labour court deserves to be quashed.

7. In view of the aforesaid the award dated 21.1.1996 passed by the labour court, Surendranagar in Ref(LCS) No.508/99 is hereby quashed and it is further directed that the Ref (LCS)No.508/99 shall be restored to file of the Labour Court, Surendranagar for its adjudication on merits in accordance with law. Since the reference being old case it is further directed that the reference shall be decided as early as possible by the labour court, Surendranagar preferably within a period of six months from the date of receipt of writ of this court.

8. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. In the facts and circumstances of the case there shall be no costs.

1.3.04 (JAYANT PATEL,J)